

Frank J. Marcone, Esquire
Attorney at Law
2530 North Providence Road
Upper Providence, Pennsylvania 19063

484-442-8305

federal practice only

Fax 484-442-8306

July 16, 2008

Via Facsimile and First Class Mail

610-337-1011

Philip Banks
405 Glen Arbor Court
King of Prussia, PA 19406

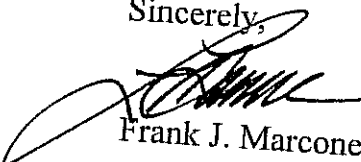
Re: Schutter vs. Herskowitz, et al.
No: 07-03823

Dear Philip:

I am enclosing herewith a copy of Plaintiff's Emergency Motion For Order To Deposit Escrowed Monies Into Court Registry regarding the above captioned.

I tried to fax you the exhibits about seven (7) times yesterday, but from my fax transmittal activity record it appears your fax machine cannot handle the volume of pages. Therefore, I am sending the exhibits with this letter by mail. I asked you to pick up the exhibits, but you refused.

Sincerely,


Frank J. Marcone

FJM:sm
enclosure

Michael Yanoff, Esquire
1800 Pennbrook Parkway
Suite 200
Lansdale, PA 19446

Frank J. Marcone, Esquire

(484) 442-8305

Fax (484) 442-8306

*2530 North Providence Road
Upper Providence, Pennsylvania 19063
federal practice only*

August 1, 2008

Michael Yanoff, Esquire
Dischell, Bartle, Yanoff, Dooley
P.O. Box 107
1800 Pennbrook Parkway
Suite 200
Lansdale, PA 19446

1-215-362-6722
Via Fax and Mail

Re: Stephen Schutter vs. David Herskowitz and Philip Banks
USDC, ED of PA, Docket No: 2:07-cv-03823-DS
Your File No: 08-03386-GL

Dear Michael:

I am enclosing herewith the following documents in relation to the Banks matter:

- 1) Letter dated March 29, 2006 from Henry T. Gallagher, Esquire, to me wherein Mr. Gallagher concludes the letter by stating "we can now only look for local counsel in the Philadelphia area to pursue this matter further";
- 2) Fax dated February 1, 2006, bearing #9 which indicates it was attached as part of the response to Herskowitz's interrogatories, and apparently was a letter from David Herskowitz forwarding a sample release to Philip Banks;
- 3) A termination agreement bearing #10 signed by David Herskowitz on February 1, 2006;
- 4) Letter from Henry T. Gallagher, Esquire, to Philip Banks Real Estate dated February 3, 2006, bearing #11 bringing to the attention of Philip Banks that he never proceeded to prepare an agreement requiring "clear unrestricted certificate of operation for a 70 bed hostel". The letter also accuses Philip of misrepresenting the property. The second page of that letter is #11A;

- 5) Letter dated March 15, 2006, from Henry T. Gallagher, Esquire, bearing #12, to David Herskowitz notifying him that as far as they are concerned the property is still "under contract";
- 6) E-mail bearing #19 which was improperly printed by Philip Banks leaving the last lines of the e-mail unreadable;
- 7) E-mail from Philip Banks to Henry T. Gallagher, again without a date. That copy bears #19A;
- 8) E-mail #19B, dated February 10, 2006 from Henry T. Gallagher to Philip Banks requesting a response to the certified letter sent to Banks. In that letter, Mr. Gallagher instructed Mr. Banks not to touch any portion of the escrow funds;
- 9) #19C appears to be an e-mail from Banks to Stephen Schutter without a date. There was an original message from Stephen Schutter saying he received phone calls, but he was going to follow the advice from Henry Gallagher;
- 10) #19D which is an undated e-mail apparently from Banks to Gallagher;
- 11) #20 e-mail sent to Stephen Schutter without a date related to the releases which I prepared, and which were signed by Herskowitz and sent to Schutter;
- 12) #20A is an e-mail dated February 7, 2006 from Schutter to Banks indicating Schutter was going to follow the advice from Henry Gallagher, but that "after considerable pushing from my family I decided before I do anything to have someone represent me. Henry Gallagher will tell me what and when I should do something and that includes signing anything or saying anything";

- 13) #23 which is an e-mail from Thomas Barbano at Wachovia to Banks. I believe the same to be self explanatory;
- 14) #25 appears to be a fax from Schutter to Banks referring to the request that a release be prepared and a reference to the 70 beds. He also refers to Iain Clayton who was being proposed by Schutter as a possible "standing" buyer from Los Angeles;
- 15) #26 from Citizens Bank appears to be signed by a "Barb" and it is undated;
- 16) #27 indicating the bank account of \$101,469.21 as of September 20, 2007;
- 17) #28 which is a short note from David Herskowitz referring to the black and white photos and his personal belongings.

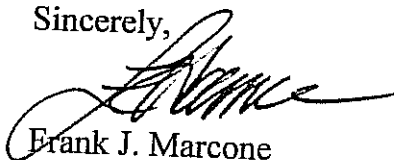
All the pages which are numbered were part of the package I provided to Philip when he refused to come and pick it up and I had to have it mailed to him.

I believe that constitutes everything that you did not have after we reviewed your file at your office and I believe if there is anything further, we could deal with it as you request.

I am looking forward to having you enter your appearance and give me an answer regarding your decision to represent Philip in the second case which is pending.

I look forward to further discussions.

Sincerely,



Frank J. Marcone

FJM:sm

enclosures

cc: Philip Banks

Frank J. Marcone, Esquire

Attorney at Law

Law Offices

2530 N. Providence Road, Upper Providence, Pennsylvania 19063

484 442 8305

Fax 484 442 8306

federal practice only

August 1, 2008

Hon. David R. Strawbridge
4006 United States
Courthouse 601 Market
Street Philadelphia,
Pennsylvania 19106

re; Schutter v. Banks
et al No 07-3823

New Complaint
filed June 9, 2008,
08-cv-2677

Dear Judge Strawbridge:

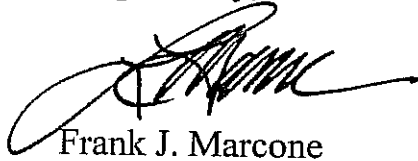
I believe you are aware that Mr. Banks has contacted Michael Yanoff, Esquire and I met with him in person at his office on Wednesday, July 30th, 2008 to review the facts and proceedings. I understand Mr. Yanoff is meeting with Mr. Banks today for the purposes of resolving representation.

In a discussion with Mr. Yanoff this morning, wherein he requested additional documents, (which I believed had been provided to Mr. Yanoff by Mr. Banks.) I faxed him and thereafter sent him copies of what I believe he needed.

In the discussions I learned Motions were filed in the second case and copies of those motions were sent to Mr. Yanoff. He was kind enough to send me an E-mail containing the Motions together with a note to Mr. Herskowitz wherein Mr. Yanoff stated he would be entering in both cases if he entered at all. I have tried to determine what is his decision and am faxing this letter to him requesting that he let me know if I must address the Rule 11 motions without him.

I will attempt to continue to keep you informed of Mr. Banks progress to procure new counsel.

Respectfully,

A handwritten signature in black ink, appearing to read 'F. Marcone', with a large, sweeping flourish extending from the end of the signature.

Frank J. Marcone

FJM/sm

cc: Michael Yanoff, Esquire

Philip Banks

(484) 442-8305

Fax (484) 442-8306

2530 North Providence Road
Upper Providence, Pennsylvania 19063
federal practice only
August 8, 2008

Michael Yanoff, Esquire
Dischell, Bartle, Yanoff, Dooley
P.O. Box 107
1800 Pennbrook Parkway
Suite 200
Lansdale, PA 19446

1-215-362-6722
Via Fax and Mail

Re: Stephen Schutter vs. David Herskowitz and Philip Banks
USDC, ED of PA, Docket No: 2:07-cv-03823-DS
Your File No: 08-03386-GL

Dear Michael:

I have been attempting to reach you by both phone, e-mail, and mail, but I have not had a response from you since last week.

As you know, I provided you with all the information you needed immediately upon completing our meeting in your office, and since then have been awaiting your entry of appearance, and taking over this case.

I have contacted you regarding the Rule 11 Motions filed by Herskowitz and Schutter in the second case, and in the letter that I had received from you, you appeared to be entering your appearance in the second case.

There is an Order which has been executed by Judge Strawbridge, and I am enclosing a copy of the same. That Order requires that Philip deposit the escrow funds with the Court by next Thursday. I wish you would discuss this with Philip immediately.

He has informed me that you have assured him you were entering your appearance, and I am "distraught" over what has happened here.

May I hear from you upon receipt of this letter.

Sincerely,


Frank J. Marcone

FJM:sm

enclosure

cc: Philip Banks

Michael - Dictated prior to our conversation

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEPHEN SCHUTTER

Plaintiff

v.

DAVID HERSKOWITZ and
PHILIP BANKS

Defendants

CIVIL ACTION

NO. 07-3823

ORDER

AND NOW, this 7th day of August, 2008, upon consideration of Plaintiff Stephen Schutter's "Emergency Motion for Order to Deposit Escrowed Monies Into Court Registry" (Doc. 142) dated July 14, 2008, and noting Defendant Philip Banks's failure to respond, **IT IS HEREBY ORDERED THAT:**

1. Plaintiff's motion is **GRANTED**;¹

¹ Under Local Civil Rule 7.1(c), an opposing party has 14 days (along with an additional 3 days where service of the motion is by mail or electronic means pursuant to Fed. R. Civ. P. 6(e)) after a motion is filed to timely respond. Where no timely response is filed, the motion may be granted by the court as uncontested. Banks thus had until Thursday, July 31, 2008 to file a response to this motion.

While we recognize that "irreparable differences" have apparently arisen between Banks and his counsel of record, Frank J. Marcone, Esquire (*see* N.T. 7/11/08 at 5), we denied Mr. Marcone's motion to withdraw as counsel for the reasons discussed at the hearing and set out in our order of July 15, 2008. (Doc. 143). We expressly recognized that Banks represented to us that he intended to obtain replacement counsel and we expressed our inclination to revisit our ruling upon the entry of an appearance from such replacement counsel. No replacement counsel has entered their appearance as of the date of this order. Accordingly, Mr. Marcone remains the attorney of record for Banks. The dispute between Banks and counsel of record does not excuse Banks, through his counsel or otherwise, from complying with deadlines, the Federal and Local Rules of Civil Procedure, or orders of this Court. Despite both Banks and Marcone having been properly served, Banks has failed to respond to Plaintiff's motion. Accordingly, we deem it to be uncontested.

(continued...)

Frank J. Marcone, Esquire

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*2530 North Providence Road
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federal practice only
August 8, 2008*

Michael Yanoff, Esquire
Dischell, Bartle, Yanoff, Dooley
P.O. Box 107
1800 Pennbrook Parkway
Suite 200
Lansdale, PA 19446

1-215-362-6722
Via Fax and Mail

Re: Stephen Schutter vs. David Herskowitz and Philip Banks
USDC, ED of PA, Docket No: 2:07-cv-03823-DS
Your File No: 08-03386-GL

Dear Michael:

I have been attempting to reach you by both phone, e-mail, and mail, but I have not had a response from you since last week.

As you know, I provided you with all the information you needed immediately upon completing our meeting in your office, and since then have been awaiting your entry of appearance, and taking over this case.

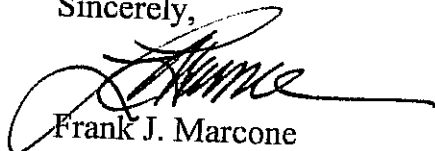
I have contacted you regarding the Rule 11 Motions filed by Herskowitz and Schutter in the second case, and in the letter that I had received from you, you appeared to be entering your appearance in the second case.

There is an Order which has been executed by Judge Strawbridge, and I am enclosing a copy of the same. That Order requires that Philip deposit the escrow funds with the Court by next Thursday. I wish you would discuss this with Philip immediately.

He has informed me that you have assured him you were entering your appearance, and I am "distracted" over what has happened here.

May I hear from you upon receipt of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Marcone", with a large, sweeping flourish extending to the right.

Frank J. Marcone

FJM:sm

enclosure

cc: Philip Banks

Frank J. Marcone, Esquire

(484) 442-8305

Fax (484) 442-8306

*2530 North Providence Road
Upper Providence, Pennsylvania 19063
federal practice only
August 8, 2008*

Philip Banks
405 Glen Arbor Court
King of Prussia, PA 19406

**Re: Schutter vs. Herskowitz, et al.
USDC, ED of PA No: 07-3823**

Dear Philip:

I am enclosing herewith an Order we received today by e-mail and I attempted to reach Michael Yanoff again (having attempted to reach him every day this week both by e-mails and by telephone), and have not had a response.

The Order is very serious, and as you know, could seriously impact upon your life.

I am unable to determine why Michael has refused to respond to my many efforts to contact him to determine if and when he is entering his appearance, and as you know, I could not file a response to the Motion because of the reasons why I withdrew.

This matter has become critical, and as I noted to you in a handwritten note, that there could have been an appeal taken, but no one acted in your behalf.

This is exactly the area wherein I am unable to assist you, and I do not know how to address the next proceeding.

Please call me, and call Michael Yanoff.

Sincerely,


Frank J. Marcone

FJM:sm
enclosure

P.S. Phil - since I dictated this, I spoke to Mike. He told me he represents you and wanted to know where the money was. I told him of the problem. I just spoke to you by phone-call soon.

Frank J. Marcone, Esquire

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*2530 North Providence Road
Upper Providence, Pennsylvania 19063
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August 11, 2008*

Michael Yanoff, Esquire
Dischell, Bartle, Yanoff, Dooley
P.O. Box 107
1800 Pennbrook Parkway
Suite 200
Lansdale, PA 19446

1-215-362-6722
Via Fax and Mail

Re: Philip Banks vs. Schutter, et al.
USDC, ED of PA, Docket No: 2:07-cv-02677-AB

Dear Michael:

I called your office and e-mailed you this morning in an effort to discuss the Philip Banks matters.

I electronically filed the Waivers of Service of Summons in the above captioned matter with the Clerk's office of the United States District Court for the Eastern District of Pennsylvania. I am enclosing copies of the Waivers.

May I please hear from you regarding the Banks cases.

Very truly yours,

Frank J. Marcone

FJM:sm
enclosures
cc: Philip Banks

Frank J. Marcone, Esquire

(484) 442-8305

Fax (484) 442-8306

*2530 North Providence Road
Upper Providence, Pennsylvania 19063
federal practice only*

August 12, 2008

Philip Banks
405 Glen Arbor Court
King of Prussia, PA 19406

Via Fax and Mail
1-610-337-1011

**Re: Schutter vs. Herskowitz, et al.
USDC, ED of PA No: 07-3823**

Dear Philip:

I have your letter of August 8, 2008, and as you may recall you retained new counsel, and I checked with Michael Yanoff, Esquire, who has assured me he has been retained, and he should have entered his appearance more than two (2) weeks ago.

The reason that I did not respond to the Motion is that if I had, I may have been in a position to have to explain to the Court what information I had received from you which is "privileged". Also, the response should have been filed by your new "retained" counsel.

As you know, after I was assured Michael Yanoff was entering his appearance, and that he now represents you, and as a result of intensive questioning regarding the escrow fund, I disclosed to him the fact that caused me to withdraw.

You are asking me to file a Response to a Motion with the Court that would compromise my integrity, and ethics in that I may have been in a position to have to disclose what I know.

Had Michael entered his appearance and responded to this, this problem may not have occurred. As you will remember, I sent you a letter with a handwritten note at the bottom saying that you could possibly appeal, but nothing has happened, and again you did not respond.

I spoke to Judge Strawbridge's chambers this morning, and I have left messages with Michael Yanoff's office, and nothing has been received by Judge Strawbridge.

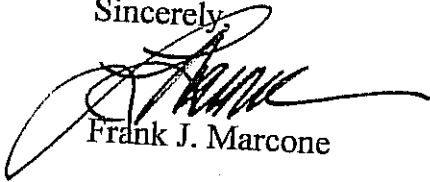
Philip Banks

Re: Schutter vs. Herskowitz, et al
August 12, 2008

Page -2-

I was reminded that trial begins on the 27th of August, 2008, and no appearance has been entered to replace me. Consequently, I may be forced to try this case. I have no problem trying it, however the present status of the record puts us in a bad position, and it could be corrected by new counsel.

Sincerely,

A handwritten signature in black ink, appearing to read 'Frank J. Marcone', with a large, stylized flourish extending from the end of the signature.

Frank J. Marcone

FJM:sm

cc: Michael Yanoff, Esquire

Frank J. Marcone, Esquire
Attorney at Law

(484) 442-8305

2530 North Providence Road, Upper Providence, Pa 19063
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Fax (484) 442-8306

August 19, 2008

Via Facsimile

Michael Yanoff, Esquire
Dischell, Bartle, Yanoff, Dooley
P.O. Box 107
1800 Pennbrook Parkway
Suite 200
Lansdale, Pennsylvania 19446

Re: Stephen Schutter v. Philip Banks, et al.

Dear Mr. Michael:

I am in receipt of your correspondence and Entry of Appearance in both cases.

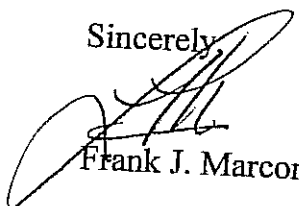
Although we have not discussed the second case, almost a month has passed awaiting your Entry of Appearance and time has been running against us.

There are outstanding Motions which must be responded to and I am prepared to do so, or to assist you in doing so, depending on what you intend to do with the case.

Obviously, I would be more of a witness than an advocate in that case. I would appreciate hearing from you so that we may address these issues immediately.

I would appreciate an immediate call.

Sincerely,


Frank J. Marcone

FJM:sm

cc: Philip Banks (via facsimile)

OFFICE CALLS TO YANOFF

"Placed Calls"

08/22/08	215-362-2474	1 min. 4 sec.
08/19/08	215-362-2474	1 min. 28 sec.
08/13/08	215-362-2474	1 min. 6 sec.
08/12/08	215-362-2474	1 min. 33 sec.
08/11/08	215-362-2474	1 min. 2 sec.
08/08/08	215-362-2474	1 min. 19 sec.
08/06/08	215-362-2474	1 min. 12 sec.
08/05/08	215-362-2474	47 sec.
08/05/08	215-362-2474	1 min. 16 sec.
08/01/08	215-362-2474	1 min. 13 sec.
08/08/08	215-362-2474	1 min. 18 sec.
08/01/08	215-362-2474	2min. 39 sec.
08/01/08	215-362-2474	4 min. 39 sec.
07/30/08	215-362-2474	1 min. 22 sec.
07/30/08	215-362-2474	3 min. 25 sec.
07/23/08	215-362-2474	3 min. 42 sec.
07/23/08	215-362-2474	2 min. 45 sec.
07/18/08	215-362-2474	18 sec.

OFFICE CALLS TO BANKS

"Placed Calls"

07/31/08	202-390-7073	45 sec.
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OFFICE CALLS FROM YANOFF

08/01/08	215-362-2474	2 min. 40 sec.
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OFFICE CALL FROM BANKS

07/31/08	202-390-7073	37 sec.
07/31/08	202-390-7073	1 min. 39 sec.
07/17/08	202-390-7073	9 min.
07/16/08	202-390-7073	5 min.
07/11/08	202-390-7073	6 sec.
06/27/08	202-390-7073	31 sec.

FAXED CALLS TO YANOFF

"Placed Calls"

08/19/08	215-362-6722	40 sec.
08/12/08	215-362-6722	52 sec.
08/11/08	215-362-6722	1 min. 22 sec.
08/04/08	215-362-6722	49 sec.
08/01/08	215-362-6722	6 min.
08/01/08	215-362-6722	3 min. 23 sec.
08/01/08	215-362-6722	5 min.
08/01/08	215-362-6722	50 sec.

FAXED CALLS TO BANKS

"Placed Calls"

08/12/08	610-337-1011	39 sec.
08/08/08	610-337-1011	19 sec.
07/17/08	610-337-1011	2 min. 33 sec.
07/16/08	610-337-1011	5 min.
07/15/08	610-337-1011	40 sec.
07/15/08	610-337-1011	40 sec.
07/15/08	610-337-1011	3 min. 57 sec.
07/15/08	610-337-101	0 sec.
07/10/08	610-337-1011	4 min. 58 sec.
07/10/08	610-337-1011	19 min.
07/09/08	610-337-1011	2 min. 8 sec.
07/09/08	610-337-1011	1 min. 39 sec.
07/09/08	610-337-1011	21 min.

ANSWERED FAX CALLS FROM YANOFF

“Answered Calls:

-0-

ANSWERED FAX CALLS FROM BANKS

“Answered Calls”

08/18/08	610-337-1011	42 sec.
08/12/08	610-337-1011	1 min. 7 sec.
08/12/08	610-337-1011	18 sec.
08/08/08	610-337-1011	41 sec.
07/18/08	610-337-1011	40 sec.
07/18/08	610-337-1011	44 sec.
07/15/08	610-337-1011	41 sec.
07/15/08	610-337-1011	41 sec.